

REFERENCE TITLE: guardians and conservators

State of Arizona
House of Representatives
Forty-eighth Legislature
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2008

HB 2836

Introduced by
Representatives Barto: Driggs, Sinema

AN ACT

AMENDING SECTIONS 14-5314, 14-5414, 14-5414.01, 14-5419 AND 14-5425, ARIZONA
REVISED STATUTES; RELATING TO GUARDIANS AND CONSERVATORS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 14-5314, Arizona Revised Statutes, is amended to read:

14-5314. Compensation of appointees; definitions

A. If not otherwise compensated for services rendered, an investigator, accountant, lawyer, physician, registered nurse practitioner, ~~OR guardian or temporary guardian~~ WHO IS appointed pursuant to this article is entitled to reasonable compensation from the estate of the ward if the petition is granted, or from the petitioner if the petition is denied.

B. IF THE PETITIONER WITHDRAWS THE PETITION OR IF THE PETITION IS DISMISSED BECAUSE OF THE PETITIONER'S FAILURE TO PROSECUTE, THE COURT MAY ORDER THAT THE COMPENSATION OF THE INVESTIGATOR, ACCOUNTANT, LAWYER, PHYSICIAN, REGISTERED NURSE PRACTITIONER OR GUARDIAN APPOINTED PURSUANT TO THIS ARTICLE BE PAID EITHER FROM THE WARD'S ESTATE OR BY THE PETITIONER, DEPENDING ON THE FACTS AND CIRCUMSTANCES. IN MAKING THIS DETERMINATION, THE COURT MAY CONSIDER ANY EVIDENCE IT DEEMS APPROPRIATE.

C. A LAWYER WHO IS EMPLOYED BY THE GUARDIAN TO REPRESENT THE GUARDIAN IN THE GUARDIAN'S APPOINTMENT OR DUTIES AS GUARDIAN IS ENTITLED TO REASONABLE COMPENSATION FROM THE WARD'S ESTATE IF THE PETITION IS GRANTED. IF THE PETITIONER WITHDRAWS THE PETITION OR IF THE COURT DISMISSES THE PETITION BECAUSE OF THE PETITIONER'S FAILURE TO PROSECUTE, THE COURT MAY ORDER THAT THE COMPENSATION OF THE PROPOSED GUARDIAN'S LAWYER BE PAID EITHER FROM THE WARD'S ESTATE OR BY THE PETITIONER, DEPENDING ON THE FACTS AND CIRCUMSTANCES. IN MAKING THESE DETERMINATIONS, THE COURT MAY CONSIDER ANY EVIDENCE IT DEEMS APPROPRIATE.

D. A LAWYER WHO IS EMPLOYED BY THE PETITIONER TO REPRESENT THE PETITIONER IN SEEKING THE APPOINTMENT OF A GUARDIAN IS ENTITLED TO REASONABLE COMPENSATION FROM THE WARD'S ESTATE IF THE PETITION IS GRANTED.

E. If the court compensates the provider of a service, the court may charge the estate for the reasonable cost of the service and shall deposit these monies in the probate fund pursuant to section 14-5433.

~~B. F. Notwithstanding subsection A of this section,~~ If compensation by the ward or the petitioner is not feasible the court shall determine and pay reasonable compensation for services rendered by an investigator, accountant, lawyer, physician, registered nurse practitioner, ~~OR guardian or temporary guardian~~ appointed in a guardianship proceeding.

G. FOR THE PURPOSES OF THIS SECTION:

1. "GUARDIAN" INCLUDES BOTH A GUARDIAN AND A TEMPORARY GUARDIAN.
2. "WARD" INCLUDES AN ALLEGED INCAPACITATED PERSON.

Sec. 2. Section 14-5414, Arizona Revised Statutes, is amended to read:

14-5414. Compensation and expenses; definitions

A. If not otherwise compensated for services rendered, any investigator, accountant, lawyer, physician, ~~OR conservator or special conservator~~ WHO IS appointed in a protective proceeding is entitled to

1 reasonable compensation from the estate OF THE PROTECTED PERSON IF THE
2 PETITION IS GRANTED OR FROM THE PETITIONER IF THE PETITION IS DENIED.

3 B. IF THE PETITIONER WITHDRAWS THE PETITION OR IF THE COURT DISMISSES
4 THE PETITION BECAUSE OF THE PETITIONER'S FAILURE TO PROSECUTE, THE COURT MAY
5 ORDER THAT THE COMPENSATION OF THE INVESTIGATOR, ACCOUNTANT, LAWYER,
6 PHYSICIAN OR CONSERVATOR WHO IS APPOINTED PURSUANT TO THIS ARTICLE BE PAID
7 EITHER FROM THE PROTECTED PERSON'S ESTATE OR BY THE PETITIONER, DEPENDING ON
8 THE FACTS AND CIRCUMSTANCES. IN MAKING THESE DETERMINATIONS, THE COURT MAY
9 CONSIDER ANY EVIDENCE IT DEEMS APPROPRIATE.

10 C. A LAWYER WHO IS EMPLOYED BY THE CONSERVATOR TO REPRESENT THE
11 CONSERVATOR IN THE CONSERVATOR'S APPOINTMENT OR DUTIES AS CONSERVATOR IS
12 ENTITLED TO REASONABLE COMPENSATION FROM THE ESTATE IF THE PETITION IS
13 GRANTED. IF THE PETITIONER WITHDRAWS THE PETITION OR IF THE PETITION IS
14 DISMISSED BECAUSE OF THE PETITIONER'S FAILURE TO PROSECUTE, THE COURT MAY
15 ORDER THAT THE COMPENSATION OF THE PROPOSED CONSERVATOR'S LAWYER BE PAID
16 EITHER FROM THE PROTECTED PERSON'S ESTATE OR BY THE PETITIONER, DEPENDING ON
17 THE FACTS AND CIRCUMSTANCES. IN DETERMINING WHICH PARTY SHALL PAY, THE COURT
18 MAY CONSIDER ANY EVIDENCE IT DEEMS APPROPRIATE.

19 D. A LAWYER WHO IS EMPLOYED BY THE PETITIONER TO REPRESENT THE
20 PETITIONER IN SEEKING THE APPOINTMENT OF A CONSERVATOR IS ENTITLED TO
21 REASONABLE COMPENSATION FROM THE PROTECTED PERSON'S ESTATE IF THE PETITION IS
22 GRANTED.

23 E. If the court pays for any of these services it may charge the
24 estate for reasonable compensation. The clerk shall deposit monies it
25 collects in the probate fund pursuant to section 14-5433.

26 ~~B-~~ F. Compensation payable to the department of veterans' services,
27 when acting as a conservator of the estate of a veteran or a veteran's
28 surviving spouse or minor child or the incapacitated spouse of a protected
29 veteran, shall not be more than five per cent of the amount of monies
30 received during the period covered by the conservatorship. A copy of the
31 petition and notice of hearing shall be given to the proper officer of the
32 veterans administration in the manner provided in the case of any hearing on
33 a guardian's account or any other pleading. ~~No A~~ commission or compensation
34 ~~shall be~~ IS NOT allowed on the monies or other assets received from a prior
35 conservator ~~nor upon~~ OR ON the amount received from liquidation of loans or
36 other investments.

37 G. FOR THE PURPOSES OF THIS SECTION:

38 1. "CONSERVATOR" INCLUDES A CONSERVATOR, TEMPORARY CONSERVATOR OR
39 SPECIAL CONSERVATOR.

40 2. "PROTECTED PERSON" INCLUDES A PERSON WHO IS ALLEGED TO BE IN NEED
41 OF PROTECTION.

42 Sec. 3. Section 14-5414.01, Arizona Revised Statutes, is amended to
43 read:

44 14-5414.01. State veterans' conservatorship fund

45 A. The state veterans' conservatorship fund is established.

1 B. All conservatorship monies collected pursuant to section 14-5414,
 2 subsection ~~B~~ F shall be deposited, pursuant to sections 35-146 and 35-147,
 3 by the department of veterans' services in the state veterans'
 4 conservatorship fund. On notice from the department of veterans' services,
 5 the state treasurer shall invest and divest monies in the fund as provided by
 6 section 35-313, and monies earned from investment shall be credited to the
 7 fund.

8 Sec. 4. Section 14-5419, Arizona Revised Statutes, is amended to read:
 9 14-5419. Accounts

10 A. ~~EXCEPT AS PROVIDED PURSUANT TO SUBSECTION F OF THIS SECTION~~, every
 11 conservator must account to the court for the administration of the estate
 12 not less than annually on the anniversary date of qualifying as conservator
 13 and also on resignation or removal, and on termination of the protected
 14 person's minority or disability, except that for good cause shown ~~upon~~ ON the
 15 application of an interested person, the court may relieve the conservator of
 16 filing annual or other accounts by an order entered in the minutes.

17 B. The court may take such action as is appropriate ~~upon~~ ON filing of
 18 annual or other accounts. In connection with any account, the court may
 19 require a conservator to submit to a physical check of the estate in the
 20 conservator's control, to be made in any manner the court may specify.

21 C. An adjudication allowing an intermediate or final account can be
 22 made only ~~upon~~ ON petition, notice and a hearing. Notice must be given to:

23 1. The protected person.

24 2. A guardian of the protected person if one has been appointed,
 25 unless the same person is serving as both guardian and conservator.

26 3. If no guardian has been appointed or the same person is serving as
 27 both guardian and conservator, a spouse or, if the spouse is the conservator,
 28 there be no spouse or the spouse is incapacitated, a parent or an adult child
 29 who is not serving as a conservator.

30 4. A guardian ad litem appointed for the protected person, if the
 31 court determines in accordance with section 14-1403 that representation of
 32 the interest of the protected person would otherwise be inadequate.

33 D. An order, made ~~upon~~ ON notice and a hearing, allowing an
 34 intermediate account of a conservator, adjudicates as to the conservator's
 35 liabilities concerning the matters considered in connection therewith. An
 36 order, made ~~upon~~ ON notice and a hearing, allowing a final account
 37 adjudicates as to all previously unsettled liabilities of the conservator to
 38 the protected person or the protected person's successors relating to the
 39 conservatorship.

40 E. In any case in which the estate consists, in whole or in part, of
 41 benefits paid by the veterans administration to the conservator or the
 42 conservator's predecessor for the benefit of the protected person, the
 43 veterans administration office ~~which~~ THAT has jurisdiction over the area is
 44 entitled to a copy of any account filed under chapter 5, article 4 of this
 45 title. Each year in which an account is not filed with the court, the

1 conservator shall, if requested, SHALL submit an account to the appropriate
2 veterans administration office. If such an account is not submitted as
3 requested, or if it is found unsatisfactory by the veterans administration,
4 the court ~~shall, upon~~ ON receipt of notice ~~thereof~~ OF THE DEFICIENCY, SHALL
5 require the conservator ~~forthwith~~ to file an account with the court PROMPTLY.

6 F. A CONSERVATOR IS NOT REQUIRED TO PROVIDE A FINAL ACCOUNT TO THE
7 COURT IF THE CONSERVATORSHIP TERMINATES BECAUSE OF THE PROTECTED PERSON'S
8 DEATH IF EVERY PERSON WHO IS ENTITLED TO DISTRIBUTIONS AS A DEVISEE OR HEIR
9 OF THE PROTECTED PERSON'S ESTATE PROVIDES A WRITTEN WAIVER OF A FINAL
10 ACCOUNTING. THE WAIVER MAY BE MADE BY THE PERSONAL REPRESENTATIVE OR THE
11 PERSONAL REPRESENTATIVES WHO WERE NOT CONSERVATORS OF THE PROTECTED PERSON.
12 UNLESS PROCEEDINGS ARE PENDING AGAINST THE CONSERVATOR, WHEN THE WAIVERS ARE
13 FILED THE COURT SHALL ENTER AN ORDER DISCHARGING THE CONSERVATOR FROM ALL
14 LIABILITIES RELATING TO THE CONSERVATORSHIP, EXONERATING AND RELEASING ANY
15 BOND OR OTHER SECURITY POSTED BY THE CONSERVATOR AND RELEASING ANY
16 RESTRICTIONS PREVIOUSLY IMPOSED ON THE CONSERVATOR'S ASSETS.

17 Sec. 5. Section 14-5425, Arizona Revised Statutes, is amended to read:
18 14-5425. Distributive duties and powers of conservator

19 A. A conservator may expend or distribute income or principal of the
20 estate without court authorization or confirmation for the support,
21 education, care or benefit of the protected person and the person's
22 dependents in accordance with the following principles:

23 1. The conservator shall consider recommendations relating to the
24 appropriate standard of support, education and benefit for the protected
25 person made by a parent or guardian, if any. The conservator may not be
26 surcharged for sums paid to persons or organizations actually furnishing
27 support, education or care to the protected person pursuant to the
28 recommendations of a parent or guardian of the protected person unless the
29 conservator knows that the parent or guardian is deriving personal financial
30 benefit ~~therefrom~~ FROM THIS ACTION, including relief from any personal duty
31 of support, or unless the recommendations are clearly not in the best
32 interests of the protected person.

33 2. The conservator shall expend or distribute sums reasonably
34 necessary for the support, education, care or benefit of the protected person
35 and the person's dependents with due regard to:

36 (a) The size of the estate, the probable duration of the
37 conservatorship and the likelihood that the protected person, at some future
38 time, may be fully able to be wholly self-sufficient and able to manage
39 business affairs and the estate.

40 (b) The accustomed standard of living of the protected person and the
41 person's dependents.

42 (c) Other funds or sources used for the support of the protected
43 person.

44 3. With respect to the affairs and estate of a minor, the conservator
45 shall also consider the following factors in making estate distributions:

(a) The financial responsibility and financial resources of the parents of the child.

(b) Extraordinary custodial responsibilities undertaken by the parent or parents as the result of the child's physical or mental condition and the effect of these extraordinary responsibilities on appropriate gainful employment of the parent.

(c) The physical and mental condition of the child and the child's medical and educational needs. Any incidental benefit to other members of the child's household derived from a distribution is not a disqualifying factor.

(d) If the child is permanently and totally disabled, the standard of living the child should reasonably expect to enjoy given the financial resources available to the child.

4. The conservator may expend funds of the estate for the support of persons legally dependent on the protected person and others who are members of the protected person's household, who are unable to support themselves, and who are in need of support. If benefits are being paid by the veterans administration to the conservator, such income may be expended only for the support of the protected person and the person's spouse and minor children, except ~~upon~~ ON petition to and prior order of the court after a hearing.

5. Funds expended under this subsection may be paid by the conservator to any person, including the protected person, to reimburse for expenditures ~~which~~ THAT the conservator might have made, or in advance for services to be rendered to the protected person when it is reasonable to expect that they will be performed and where advance payments are customary or reasonably necessary under the circumstances.

6. A conservator, in discharging the responsibilities conferred by a court order and this section, shall implement the principles described in section 14-5408 to the extent possible.

B. When a minor who has not been adjudged disabled under section 14-5401, paragraph 2 attains majority, the conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible.

C. When the conservator is satisfied that a protected person's disability, other than minority, has ceased, the conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible.

D. If a protected person dies, the conservator may deliver to the court for safekeeping any will of the deceased protected person ~~which~~ THAT may have come into the conservator's possession or deliver the will to the personal representative named in the will. If the will is delivered to the personal representative named in the will, a copy of the will shall be filed with the court in the conservatorship proceeding. If the will is filed with the court, the conservator shall inform the personal representative or a

beneficiary named ~~therein~~ IN THE WILL that the conservator has done so, and retain the estate for delivery to a duly appointed personal representative of the decedent or other persons entitled ~~thereto~~ TO THE ESTATE. If ~~after forty days from the death of the protected person no other person has been appointed personal representative and no application or petition for appointment is before the court~~ ANY OF THE FOLLOWING SITUATIONS EXIST, the conservator may apply to exercise the powers and duties of a personal representative so that the conservator may proceed to administer and distribute the decedent's estate without additional or further appointment:

1. FORTY DAYS AFTER THE DEATH OF THE PROTECTED PERSON ANOTHER PERSON HAS NOT BEEN APPOINTED PERSONAL REPRESENTATIVE AND AN APPLICATION OR PETITION FOR APPOINTMENT IS NOT BEFORE THE COURT.

2. ANOTHER PERSON HAS BEEN APPOINTED PERSONAL REPRESENTATIVE AFTER THE PROTECTED PERSON'S DEATH, AN APPLICATION OR PETITION FOR APPOINTMENT IS NOT BEFORE THE COURT AND THE CONSERVATOR IS THE PERSON WITH PRIORITY AS DETERMINED BY A PROBATED WILL, INCLUDING A PERSON WHO IS NOMINATED BY A POWER CONFERRED IN A WILL.

3. ANOTHER PERSON HAS NOT BEEN APPOINTED PERSONAL REPRESENTATIVE AFTER THE PROTECTED PERSON'S DEATH, AN APPLICATION OR PETITION FOR APPOINTMENT IS NOT BEFORE THE COURT, AFTER THE EXERCISE OF REASONABLE DILIGENCE THE CONSERVATOR IS UNAWARE OF ANY UNREVOKED TESTAMENTARY INSTRUMENT RELATING TO PROPERTY LOCATED IN THIS STATE AND ALL THE HEIRS OF THE PROTECTED PERSON HAVE NOMINATED THE CONSERVATOR TO EXERCISE THE POWERS AND DUTIES OF A PERSONAL REPRESENTATIVE.

E. The conservator may include in ~~such~~ an application MADE PURSUANT TO SUBSECTION D OF THIS SECTION a request to probate the will of the deceased protected person OR TO ADJUDICATE THAT THE PROTECTED PERSON DIED INTESTATE AND TO DETERMINE THE PROTECTED PERSON'S HEIRS. On receipt of an application, the registrar, after making the findings required pursuant to section 14-3303, IF APPLICABLE, shall issue a written statement of informal probate, OR A STATEMENT OF INTESTACY, and shall endorse the letters of the conservator. The registrar may also enter the will of the deceased protected person to probate. The statement of the registrar under this section shall have the effect of an order of appointment of a personal representative as provided in section 14-3308 and chapter 3, articles 6 through 10 of this title, except that the estate in the name of the conservator, after administration, may be distributed to the decedent's successors without prior ~~re-transfer~~ RETRANSFER to the conservator as personal representative. IN EXERCISING THE POWERS AND DUTIES OF A PERSONAL REPRESENTATIVE AFTER THE DEATH OF THE PROTECTED PERSON, THE CONSERVATOR IS NOT REQUIRED TO ACCOUNT FOR THE ADMINISTRATION PURSUANT TO SECTION 14-5419 BUT IS SUBJECT TO THE RELATED DUTIES OF A PERSONAL REPRESENTATIVE FOR THE ADMINISTRATION.

~~E.~~ F. If a protected person dies, and on reasonable inquiry the conservator is unable to locate any person specified in section 36-831, subsection A, paragraphs 1 through 11 willing to assume the duty of burying

1 the body of the decedent or making other funeral and disposition
2 arrangements, the conservator may make reasonable burial or other funeral
3 arrangements, the cost of which is a charge against the estate.
4 ~~F.~~ G. The estate of a deceased protected person is liable for any
5 unpaid expenses of the conservator's administration, and such expenses are a
6 lien on property transferred by the conservator to the decedent's personal
7 representative.